

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 153 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed  
to see the judgements? Yes

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3. Whether Their Lordships wish to see the fair copy  
of the judgement? No

4. Whether this case involves a substantial question  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?  
No

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COMMISSIONER OF INCOME TAX

Versus

KOTHARI OIL PRODUCTS CO. LTD.  
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Appearance:

MR BB NAIK with MR MANISH R BHATT for Petitioner

CORAM : MR.JUSTICE J.N.BHATT and

MR.JUSTICE A.R.DAVE

Date of decision: 02/02/99

ORAL JUDGEMENT (per J.N. Bhatt, J.)

At the instance of the Revenue, the Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question of law arising out of its order dated 21.7.1983 in I.T.A. No. 1603/Ahd/1981 relating to Assessment Year 1977-78.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the sum of Rs. 12,860/incurred as legal expenses for the assessment year 1974-75 and 1975-76 was allowable under section 80VV and u/s 37 of the Income-tax Act, 1961?"

2. The reference has arisen on account of the view of the appellate tribunal, in its impugned order dated 21.7.83, whereby the claim of the assessee company, of the deduction towards the expenditure in A.Y. 1977-78, for the legal expenses incurred by the assessee company for the two years 1974-75 and 1975-76, was partly allowed.

3. The assessee company claimed an expenditure of Rs. 15,860/- in respect of legal expenses for the A.Y. 1977-78 out of which the ITO had allowed a sum of Rs. 5,000/- and disallowed the balance in the light of the provisions of Sec. 80VV of the Income-tax Act, 1961 (I.T. Act for short) whereas the Commissioner of Income-tax (Appeals), in an appeal at the instance of the assessee, upheld the order of the ITO. At the instance of the assessee, the matter was carried to the Income Tax Appellate Tribunal. The Tribunal held that, out of the total expenditure of Rs. 15,860/-, by way of legal expenses for the years 1974-75 and 1975-76, a sum of Rs. 3500/- could be allowed u/s 80VV, whereas, out of the balance, Rs. 3000/- was disallowable as non-business expenditure and the remaining sum of Rs. 9360/- was allowable u/s 37 of the I.T. Act. In the result, as per the opinion of the Tribunal, the total deduction of Rs. 12,860 (Rs. 3500 u/s 80VV + Rs. 9360 u/s 37 = Rs. 12860) was allowable. Hence, the Department had proposed

the reference for the opinion of this Court.

4. Despite the service to the opponent assessee company, none has appeared. However, we have gone through the entire record. After hearing the Learned Counsel for the applicant-Revenue, we are of the opinion that the view taken by the Tribunal is unsustainable in view of the plain perusal of Sec. 37 read with Sec. 80VV, as it then stood in the I.T. Act.

5. The reason assigned by the Appellate Tribunal in paras 4 and 5 are not sustainable. Section 80VV provides for deduction in respect of expenses incurred in connection with certain proceedings under the Act with upper monetary ceiling of, in aggregate, Rs. 5,000/-. Therefore, the assessee would be entitled to deduct as an expenditure, from the income, of any expenditure incurred by it in the previous year, in respect of any proceedings before the authority under the I.T. Act, maximum to the tune of Rs. 5,000/-, as per the proviso to Sec. 80VV. Accordingly, the ITO had allowed a sum of Rs. 5,000/- as an expenditure out of the claim of Rs. 15,860/- which also came to be confirmed in the first appeal before the CIT (Appeals).

6. Section 37 relates to the general provisions of expenditure allowable as deduction from the income. By virtue of an amendment introduced by the Taxation Laws (Amendment) Act, 1975, which came into operation with effect from 1.4.1976, any expenditure other than the expenditure of nature mentioned in sections 30 to 36, and also u/s 80VV, and not being in the nature of capital expenditure or personal expenses of the assessee laid out or expended wholly and exclusively for the purposes of business or profession, shall be allowed in computing the income chargeable under the head "Profits and Gains of Business or Profession". It will also be interesting to note that the provisions of sec. 80VV as such came to be introduced by virtue of the Taxation Laws (Amendment) Act, 1975 with effect from 1.4.1976, though the expenditure claimed by the assessee company was incurred for the years 1974-75 and 1975-76, was claimed by way of deduction u/s 37 and 80VV of the I.T. Act, for the A.Y. 1977-78.

7. It appears that the attention of the Tribunal was not drawn to the amendments referred by us hereinabove. In the circumstances of the case, and in the light of the clear provisions of sections 37 and 80VV of the I.T. Act, we are of the clear opinion that the reference deserves to be decided in favour of the revenue.

8. As a result of the aforesaid discussion, we answer the question referred to us, in affirmative, that is to say, in favour of the Revenue and against the assessee. There shall be no order as to costs.

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